

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 EL PASO DIVISION
4 UNITED STATES OF AMERICA No. EP:05-CR-856-KC
5 v. El Paso, Texas
6 IGNACIO RAMOS, ET AL. February 15, 2006

7
8 PRETRIAL MATTERS
9 BEFORE THE HONORABLE KATHLEEN CARDONE
10 UNITED STATES DISTRICT JUDGE
11 VOLUME IV OF XVII

12 APPEARANCES:

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24 Proceedings recorded by stenotype. Transcript produced by
25 computer-aided transcription.

David A. Perez, CSR, RPR

1 THE COURT: You may be seated.

2 THE CLERK: EP:05-CR 856, USA versus Ignacio Ramos and
3 Jose Alonso Compean.

4 MS. KANOF: Debra Kanof and Jose Luis Gonzalez for the
5 United States.

6 MS. STILLINGER: Mary Stillinger and Steve Peters for
7 Ignacio Ramos, Your Honor.

8 MS. RAMIREZ: Maria Ramirez on behalf of Jose Alonso
9 Compean, Your Honor.

10 THE COURT: All right. Now, for the record, we have
11 had -- we have taken issues up. We are now on the record, and
12 the Court had scheduled this case for a status conference for
13 today.

14 What the Court likes to do is, before we go to trial,
15 make sure that we have everything cleaned up and ready for
16 trial.

17 I show some pending motions that I would like to
18 address today. I think we could go through them relatively
19 quickly, and I would like to go through them in the order that
20 the Court has them. And so let me first address -- I show no
21 pending Government motions. Is that correct?

22 MS. KANOF: No motions, Your Honor. Just the 404
23 notice, which I think the defense wants to object to.

24 THE COURT: Okay. Go ahead, then, if you want to
25 raise that.

1 MS. STILLINGER: Yes, Your Honor. I have the motion
2 in limine, the first prong of which addresses their 404(b)
3 notice, Your Honor. And the 404(b) notice addressed several
4 arrests that Mr. Ramos had prior to the arrest in this instant
5 case, and the fact he was disciplined by Border Patrol for
6 those arrests, and on one occasion for failure to report his
7 arrest.

8 And, Your Honor, I would like to address that
9 factually, first, before I get into arguing the law. And I
10 would like to submit a couple of exhibits in support of my
11 factual background.

12 The first arrest, Your Honor, is a 1996 arrest for a
13 family violence case. And, actually, to be honest, maybe I
14 should shortcut this. I'm not sure if the Government was
15 intending to include that in their 404(b) notice or not. They
16 didn't mention it.

17 What I'm submitting to the Court I'm calling Ramos
18 Exhibit 2, because we submitted an exhibit on Monday, and I'm
19 thinking this might be viewed as a continuation of those
20 hearings we had on Monday.

21 But what I'm submitting to the Court is a
22 November 1996 letter from the Assistant District Attorney
23 talking about the fact of the 1996 arrest. The District
24 Attorney's office declined to prosecute, stating there was a
25 nonprosecution affidavit executed by the alleged victim,

1 wherein the spouse states that she -- that the assault never
2 occurred, and she never intended for Mr. Ramos to be arrested.
3 And then, furthermore, going on to say that there were no
4 visible injuries and no signs of violence, and that that was
5 the basis for the District Attorney declining the prosecution
6 in the case. That's one of the arrests, Your Honor. I'm
7 submitting that exhibit for the Court to understand the
8 weakness of the evidence, I guess, of his arrest.

9 Your Honor, the second --

10 THE COURT: Is this the only arrest?

11 MS. STILLINGER: No, there's three arrests,
12 Your Honor.

13 THE COURT: Okay. Now, I can -- where are you
14 going --

15 MS. STILLINGER: Would you like me to address them
16 individually?

17 THE COURT: Well, no. No, you can address all three.
18 Are you going into the other arrests right now? Is that where
19 you were going?

20 MS. STILLINGER: I was going to go there.

21 THE COURT: Okay. Sorry. That's what I was going to
22 ask you.

23 MS. STILLINGER: Your Honor, there is also a 2002
24 arrest. And, actually, the date is incorrect in this report.
25 It says October the 1st, which is the date referenced in the

1 Government's motion, but I think other documentation shows it
2 was October 31, 2002.

3 I'm sorry. Let me label that Ramos Exhibit 3.

4 Your Honor, the reason I'm submitting this exhibit is
5 because the Government's description of this offense in their
6 404(b) notice describes this incident as occurring, that
7 Mr. Ramos was arguing with his wife and fighting with his wife,
8 and when his small son tried to intercede to protect his
9 mother, Mr. Ramos got mad at his son and spanked the son.

10 And the Government relies on that very emotional
11 description of the offense to show that this is evidence of
12 Mr. Ramos's intent to dominate, rather than to protect, which
13 is the same intent that happened in this case, and that's why
14 it's admissible under Rule 404(b).

15 Your Honor, the Ramos Exhibit 2 is the police
16 report -- the only police report I could find of the offense,
17 and it is a description, or -- of -- from a police officer's
18 description of the offense, and it does not describe it that
19 way. It says that the son was approaching her during the
20 argument, and that Mr. Ramos spanked his son. And that she, at
21 some point -- this says that he pushed her into a bathroom
22 door, that she fell into a bathroom door. It says that he
23 pushed -- that he pushed her, and she hurt her back, upon which
24 she had recently had surgery.

25 Your Honor -- and a little more factual background, if

1 we were to get into the facts of this incident, is that the
2 argument Mr. and Ms. Ramos were having had to do with the
3 discipline of the son. The spanking had nothing to do with the
4 little boy trying to protect his mother, and it doesn't even
5 say that in the police report.

6 That is, I guess, I -- I would say exaggeration, or
7 reading something into it on the part of the prosecutor.
8 That's not what happened. There was an argument over
9 disciplining the son and over Mr. Ramos spanking the son in a
10 disciplinary way that caused the argument.

11 In any event, Your Honor, this case was also
12 declined -- or, rather, dismissed, which I guess, technically,
13 is a little bit different than declined in the District
14 Attorney's office. I'm not proffering you the dismissal, or
15 because I don't think it's in dispute that it was dismissed.

16 The third offense -- and I don't have the police
17 reports for you on that. But the third arrest has to do -- it
18 was a day -- the day after this arrest that I just gave you the
19 report for. And it has to do with Mr. Ramos's father-in-law
20 complaining that he had been hit by Mr. Ramos.

21 Again, I'm not submitting the reports to you, because
22 I don't think they're factually in dispute. But Mr. Ramos's
23 father-in-law hit him first, and Mr. Ramos hit him back, or
24 pushed him back, pushed him down and hit him. That -- he was
25 initially arrested for that. That case was declined by the

1 District Attorney's office. And I --

2 THE COURT: Can I stop you there, Ms. Stillinger?

3 MS. STILLINGER: Yes.

4 THE COURT: So in the -- all three cases he was
5 arrested?

6 MS. STILLINGER: Yes, ma'am.

7 THE COURT: In the first case it was dismissed, but --
8 and you've presented to the Court a letter indicating that the
9 assault never occurred -- at least by the complaining
10 witness -- the assault never occurred, and it was never
11 intended to be arrested. And the other two cases you are
12 saying he was arrested, but those -- both cases were also
13 dismissed.

14 MS. STILLINGER: He was arrested all three cases. The
15 first one was declined by the District Attorney, which as I
16 understand it, means that they never even filed it in the
17 Court. He was arrested on a complaint filed by a police
18 officer, but they actually -- when the District Attorney very
19 first looked at it, they declined to prosecute. So that didn't
20 even pass the first hurdle.

21 THE COURT: Right.

22 MS. STILLINGER: The second one, the District Attorney
23 did accept it, but then it was dismissed.

24 THE COURT: Okay.

25 MS. STILLINGER: And I have to say, between those two,

1 I'm not positive about the third one. I think that it was
2 declined, as well. I'm almost positive it was declined. I
3 have the paperwork here. I can check.

4 THE COURT: All right. Now, so I'm clear, Ms. Kanof,
5 it is the Government's position that these are admissible -- I
6 have the motion in limine. It is the Government's position
7 that these two -- these are admissible for purposes of what?

8 MS. KANOF: Your Honor, there's something else --

9 THE COURT: Okay.

10 MS. KANOF: -- that is in the 404(b) notice. And that
11 is that -- you know what? I'm going to agree with her on the
12 1996 assault. Okay?

13 THE COURT: Okay. That's the first arrest?

14 MS. KANOF: Right. I'm going to agree on the motion
15 in limine.

16 THE COURT: Okay. Great.

17 MS. KANOF: That it can't become -- the defendant's
18 part of the defense, through the motion practice, is that he --
19 that it was self-defense. And, in both of these arrests, I
20 don't know why the DA's office allowed -- they were -- they
21 were arres- -- dismissed because he took anger management
22 classes in one case. And, in both cases, the complaining
23 witnesses came back and said no.

24 DA claims they have a policy of not accepting a
25 non-pros from a victim. Why they violated their own policy in

1 this case, I don't know. But the purpose of this -- and these
2 two arrests -- the second two arrests -- happened a day apart.

3 On the 31st of October the altercation happens where
4 he pushes his wife against the door, and she had just had
5 surgery on her back. And then she moves out. She leaves, in
6 fear, with the children, and goes to her father and her
7 mother's house. She stayed at the house the next day.

8 When he shows up -- and the father thought he was
9 going to -- she -- she had told her father she didn't want to
10 see him, that she was intimidated by him. And I got all this
11 from the police report.

12 And he is trying -- he goes -- she's in the car with,
13 I think her sister and the kids. And he goes and tries to get
14 her out of the car, tries to open the door, and the father is
15 actually initially the aggressor to stop him from doing that,
16 and then they engage in an altercation.

17 What's important about --

18 THE COURT: Okay. Okay. I don't want to interrupt
19 you, but so I'm clear, what are -- for what purpose are you
20 trying to admit --

21 MS. KANOF: I'm getting there.

22 THE COURT: Okay.

23 MS. KANOF: Border Patrol policy requires the agent to
24 report if they're arrested, no matter what happens to the case
25 later on.

1 THE COURT: Okay.

2 MS. KANOF: He did not report the -- he didn't report
3 the last two arrests, and he was suspended from the Border
4 Patrol for conduct unbecoming and for failure to report these.

5 THE COURT: How is that relevant to this case?

6 MS. KANOF: The counts -- I don't know the number of
7 the counts. The Government has indicted the defendant for
8 failure to report the shooting in three or four counts,
9 obstruction of justice.

10 It is signature what he did by failing -- failing to
11 report these two assaults is signature to failing to report the
12 assault on February 17, 2005. It shows a pattern of conduct on
13 his part. He's going to defend that and say -- Ms. Stillinger
14 told you in camera -- that he's going to defend that and say --
15 or at least Mr. Compean, I guess, is going to defend it and say
16 they were discouraged because it was too much paperwork.

17 I don't know whether that's true or not. But if he
18 defends it that way, this is definitely admissible, because
19 he's got a pattern of when he assaults not reporting it.

20 And, more important, his defense is self-defense. And
21 his defense is that he acted the way he did because he
22 perceived that his partner was in danger from an altercation,
23 and then perceived that Aldrete-Davila had a gun.

24 And if -- if he testifies that way, the Government can
25 certainly impeach him, because he had the same defense with the

1 injury -- or with the altercation with his father-in-law, that
2 it was just self-defense.

3 And it's a pattern on his part to cover up his
4 assaultive behavior. First of all, not to follow Border Patrol
5 regulations for which he is indicted, because in this case it
6 rises to the -- he's obstructing official proceedings.

7 And -- and he did the same thing. He obstructed an
8 official proceeding by not reporting the arrests. He never
9 reported the arrests.

10 So it's not so much the arrests that are admissible,
11 unless he puts forth character -- I'm peaceful and law abiding,
12 you know. They might become admissible at some point then.
13 It's the failure to report the arrests that is 404(b), because
14 it is absolutely signature to the case that we're talking
15 about --

16 THE COURT: All right.

17 MS. KANOF: -- in the indictment.

18 THE COURT: And, Ms. Stillinger, in -- and the
19 question from the Court is: How is this not -- if he intends
20 to -- if it is, in fact, Border Patrol policy that he reports
21 arrests, and if, in fact, he is charged with failure to report
22 an incident, how is this not evidence of his lack of mistake,
23 intentional withholding of a report, et cetera, and indicative
24 of prior behavior?

25 MS. STILLINGER: Let me clarify factually, first,

1 Judge. There's only one arrest that he failed to report, which
2 was the arrest by the Horizon City Police that's referenced in
3 the report that I submitted to you.

4 THE COURT: So that's arrest 2, you're talking about?

5 MS. STILLINGER: The second arrest, yes.

6 THE COURT: Okay.

7 MS. STILLINGER: The third arrest -- and I'm getting
8 all of this from his personnel file. But the third arrest,
9 which was the altercation with his father-in-law, there's a
10 report on U.S. Border Patrol stationery that says that while he
11 was being processed, Mr. -- while Agent Ramos was being
12 processed, they were called and notified at 1:40 p.m. This is
13 on November 3, 2002. At 1:40 p.m. Sergeant Andrade, of the
14 El Paso police -- I'm sorry -- of the El Paso, Texas, Police
15 Department, informed me by telephone that Border Patrol Agent
16 Ignacio Ramos was under arrest for family violence.

17 So they were notified while he was at the station,
18 which -- by the way, he had gone to the station to report the
19 assault on himself, when he found out his father-in-law had
20 beat him to it, and he was arrested. He didn't know he was
21 going to be arrested. But he was arrested right then, and they
22 called his supervisor and told him, which is documented here.

23 THE COURT: So it's your position, regarding arrest
24 number 3, that he did report it?

25 MS. STILLINGER: Factually -- factually, on arrest

1 number 3. He did report number 1, and I would like to clarify
2 it was declined. I have that memo where it was declined for
3 prosecution which, again, is different than being dismissed.
4 It was never accepted by the District Attorney's office. And
5 that is -- and then also, I would point out that that's the
6 only case where there was a self-defense.

7 THE COURT: Okay. So let's talk about --

8 MS. STILLINGER: Arrest number 2?

9 THE COURT: -- arrest number 2.

10 MS. STILLINGER: Okay. Arrest number 2, Mr. Ramos did
11 not say, with arrest number 2, oh, it was too much paperwork to
12 report. What he said -- and this is documented in the
13 responses to the disciplinary action. He told them, I thought
14 that you were notified, because when I got arrested in '96,
15 Border Patrol was automatically notified, so I thought Border
16 Patrol would be automatically notified again. I didn't intend
17 not to report this arrest.

18 Then, of course, the very next day they find out about
19 this other arrest. So there's no issue about him not reporting
20 that. He -- it's not a similar -- well, I mean -- and let's
21 get back to the assault at issue in this case.

22 Mr. Ramos is not the victim of the assault in this
23 case. That's Mr. Compean. So that's -- I mean, that's another
24 issue about who's supposed to be reporting the assault. It's a
25 different regulation. It's a whole different stream of

1 paperwork, when you're a victim of an assault -- when there is
2 an assault that occurs on a federal officer, there has to be
3 investigations and prosecution paperwork. And that's one of
4 the things that the Border Patrol Supervisor Richards says,
5 that, Oh, we would have done all this paperwork, it would have
6 been investigated, et cetera, if we had known there had been an
7 assault.

8 If you get arrested for an assault on your wife, you
9 pick up the phone and you notify your supervisor. That's --
10 there's not a lot of paperwork that goes into it. I mean, it's
11 a completely different animal.

12 So -- and, obviously, Your Honor, we can't get into
13 his failure to report the arrest without getting into the fact
14 that there was an arrest. And if we get into the fact that
15 there is an arrest, obviously, we get into the fact of that
16 case, and I think that's very prejudicial, Your Honor.

17 I mean, when you look at the 404(b) evidence, I mean,
18 what -- what is the characteristic? If he -- if he -- granted,
19 if Mr. Ramos said, I didn't know anything was ever supposed to
20 be reported to supervisors. I didn't know assaults were
21 supposed to be reported, I didn't know gunfire was supposed to
22 be reported, I didn't know any of that. That could open the
23 door to this coming in, to saying, Well, didn't you learn, when
24 you were disciplined back in 2002 for not reporting your
25 arrest, didn't you learn that certain things have to be

1 reported?

2 I'll give you that, Your Honor. If -- if he opens the
3 door and says, I didn't know about any reporting requirements
4 ever about anything, yes, it could come in to show that he did
5 have knowledge about that.

6 And my understanding of what Ms. Kanof says is that
7 that's what she would be offering it for, if he claims he
8 doesn't know about reporting requirements. If that's the only
9 way she's planning on offering it, I think we could probably
10 cut this part of our limine motion short, because I can't
11 imagine that the door would be opened like that.

12 MS. KANOF: Your Honor, now, I have to correct
13 something factual. It's not indicted -- he's indicted for
14 failure to report the discharge of his firearm. And I didn't
15 realize, until listening to Ms. Stillinger, that he didn't
16 report the 1996 arrest either, because it was automatically
17 reported. And, according to Ms. Stillinger, if I heard her
18 correctly, he didn't report either of the assaults in 2003.
19 The sheriff's department, or the booking agent, called Border
20 Patrol. He didn't.

21 That does not vitiate his requirement. The
22 requirement is he has to report his arrests. And he -- and
23 because the sheriff reporting it, or because it was
24 automatically reported in the past, it doesn't say in the
25 regulations, just as long as we know about it, as long as

1 somebody tells us. He has to fess up himself, in the
2 regulations.

3 So now I find out that he violated Border Patrol
4 policy in all three. If he -- he is defending -- I don't know
5 how he is going to defend his conduct regarding the failure to
6 report, but he has a history of it, and he's been told.

7 As far as --

8 THE COURT: But he doesn't have a history of failure
9 to report an event that occurred on duty. In other words, he
10 doesn't -- you're not telling the Court that he has a history
11 of going to a scene and essentially not reporting what happened
12 at that scene.

13 He may have a failure to report, you know, that he was
14 arrested for domestic violence, or that he was arrested in
15 other things off duty. But we are talking about a failure to
16 report incidents as they occurred in his position as a Border
17 Patrol. So how would that be the same, or sufficiently
18 relevant to this case, to show a pattern?

19 MS. KANOF: The rule on reporting discharge of
20 firearms --

21 THE COURT: Uh-huh.

22 MS. KANOF: -- is that you're required to report it
23 even if it happens off duty. If you're at home cleaning your
24 firearm -- you don't have to be on duty.

25 THE COURT: But these aren't discharge of firearms off

1 duty.

2 MS. KANOF: Well -- and I will tell you, Your Honor,
3 there is -- one of the counts is a general obstruction of
4 justice, and that is, impedes the process of justice. Failure
5 to report, thus impeding the process of justice.

6 He not only did not report the discharge, did not
7 report the assault on Mr. Compean that they're going to say
8 happened, he didn't report the assault on Osvaldo Aldrete. And
9 he -- so the history of reporting, regardless of whether it
10 happened on duty or off duty, the history of not reporting
11 assaults is there.

12 And the -- I think it's Count 9 -- it's either Count
13 9 -- I think it's -- I'm pretty sure it's Count 9 -- charges
14 him with 1512(c)(2), which is a general catchall phrase of, you
15 know, obstructing justice.

16 And the -- you know. And it's -- basically, they
17 couldn't investigate anything, because he didn't report it.
18 They couldn't investigate the victim being shot. They couldn't
19 investigate Mr. Compean being assaulted. They couldn't
20 investigate the discharge of either of their firearms, because
21 of the failure to report it.

22 And -- and the defense that somebody knew about it
23 makes the arrests even more relevant, because it's the same
24 excuse he used for the Border Patrol before. I didn't have to
25 report it, because somebody else already did, or somebody else

1 already knew about it.

2 And it's -- the Government sees it as signature
3 behavior.

4 MS. STILLINGER: And, Your Honor, Ms. Kanof is talking
5 about some of the Border Patrol regulations that makes it not
6 sufficient that they know about the arrest, some regulation
7 that says you have to do something else other than -- let me
8 just -- let me tell you what happened on this arrest that we're
9 talking about.

10 I'm sorry, this is the arrest of the altercation with
11 his father-in-law, which the supervisor patrol agent went to
12 the east side regional command center to pick up Agent Ramos's
13 badge and credentials.

14 So it's not like, oh, gee it just happened to get
15 reported. He's at the police station, they come down and get
16 his badge and credentials. I mean, he knows -- he has a
17 face-to-face with these people. He knows that they know about
18 it.

19 And she's citing, well, that's still a violation,
20 because he didn't do something else. But I don't see the
21 regulation that says that. And I don't see any potential
22 violation for not reporting that, when they've come to you and
23 they've said, We're writing this up, give us your badge and
24 credentials. I mean, of course they knew about it. There was
25 no other requirement for him to report that.

1 Your Honor, let me just talk about the law for a
2 minute on 404(b). I think the Court is hitting on the most
3 significant problem -- well, there's a couple of problems with
4 this evidence. The most significant problem is that it's not
5 similar enough to show intent, motive, et cetera. And some of
6 the cases talk about the degree of similarity is one of the
7 first things the Court has to look at.

8 And I know the Court has probably read that Grugman
9 (phonetic) case that was cited by the Government, and I also
10 cited it in my motion in limine, where it was a Border Patrol
11 agent that was charged with violating somebody's civil rights,
12 and apparently he beat somebody up after they were already in
13 custody and were not resisting arrest.

14 And the Border Patrol agent did the same thing about
15 six weeks later with another person that he was chasing. And
16 after the person was subdued, he beat the guy up. And the
17 Border Patrol agent defended with trying to keep that out of
18 evidence. And the Court said, It is strikingly similar, and
19 that it does go to same intent to deprive another of his
20 Constitutional rights by using unreasonable force to effectuate
21 an arrest. I mean, they were very similar events. And that
22 case talked -- and, of course, they all go back to the Beechum
23 test, the balancing test, and the fact issues that you look at.

24 But one of the first things you look at is similarity
25 of conduct, Your Honor. And I think that the conduct is simply

1 not similar enough.

2 Again, even if the Court were to find that a failure
3 to report the arrests, I mean, somehow was similar enough to
4 the failure to report the discharge of a firearm, or something
5 at work, the Court has to do the balancing test. It's not
6 enough to say, Yes, it's relevant under 404(b). You still have
7 to go through the 403 balancing test and recognize, under the
8 circumstances, if we agree that the actual arrest doesn't come
9 in, because -- and let me just say one thing about the arrest.
10 The quality of the evidence is another thing that came into --
11 I mean, that the Courts have talked about -- is the quality of
12 evidence. There has to be some pretty good evidence that the
13 thing actually occurred.

14 And I cited -- oh, I'm sorry. That's all in the
15 Grugman case. They talk about the Government has to adequately
16 demonstrate the defendant committed that other act.

17 I don't think a police report is going to be adequate.
18 And in the Grugman case, they had the actual undocumented
19 alien, who had been beat up the second time, come to court and
20 talk about it.

21 In this case, Ms. Ramos was the complaining witness in
22 that arrest, and she would not come to court and say that that
23 happened. And, on the contrary, she had signed a
24 nonprosecution statement. So all we would even have is some
25 sort of hearsay coming in through a police report, which would

1 not be good evidence, would not be admissible evidence under
2 404(b) anyway. So we have a problem with the quality of the
3 evidence of that arrest.

4 Now, if we get into his failure to report, I mean,
5 maybe -- maybe there is stronger evidence of his failure to
6 report, and he says it was -- you know, he said he thought that
7 it was automatically reported, but he was disciplined for
8 failure to report that second arrest.

9 But, Your Honor, that can't come in without the
10 underlying arrest coming in, which obviously, under 403, is
11 going to be very prejudicial to him, completely irrelevant, get
12 the jury focused on something that has nothing to do with this
13 case, which is how he treats his wife or his children. And I
14 really think that it doesn't even come in under the 404(b).
15 But really, if you -- not the second test, under 403, the
16 balancing test, Your Honor.

17 THE COURT: Ms. Kanof?

18 MS. KANOF: I don't think the facts of the arrest ever
19 come in, Judge. I don't think the facts underlying the arrest
20 ever come in.

21 What it shows is -- I mean, he's been disciplined and
22 told, You've got to follow every rule. And now here he is not
23 following a rule again, and this time it had even more serious
24 consequences. It shows his pattern of violating --
25 intentionally -- it goes to his intent -- intentionally

1 violating Border Patrol policy. And he violates Border Patrol
2 policy not just in failing to report the discharge, the assault
3 on his partner, and the assault of the victim, he violates
4 Border Patrol policy when he chases Osvaldo to begin with.

5 And I think the evidence will show that he engaged in
6 a high-speed chase. He was only a car length behind the whole
7 time. He did not ask permission. He did not go sirens and
8 lights. To go sirens and lights you have to ask permission,
9 which is why he probably didn't, because high-speed chases have
10 to be authorized by a supervisor, which also goes to his
11 intent.

12 It's -- it's -- I've never -- I never intended to
13 offer the underlying facts of the assaults. And, yes, I think
14 the Court can -- can draft a limiting instruction, even with
15 regard to, Isn't it true you've not so much -- why -- you have
16 previously been suspended for failure to follow Border Patrol
17 reporting policies.

18 And, you know, if -- if -- of course, if he does get
19 to put into evidence character for peaceable and law abiding,
20 the Government would definitely want to get into the assaults.

21 We all know -- everybody in this courtroom knows that
22 complaining witnesses dismiss charges and lie about what
23 happened. It's just the nature of domestic violence. I don't
24 want to cross-examine his wife, but I'm appalled at the fact
25 that she was allowed to dismiss the last two cases.

1 THE COURT: All right. Regarding the issue of the
2 404(b) evidence, the Court will issue the following ruling on
3 the motion in limine. The Court will grant the motion in
4 limine regarding Mr. Ramos's prior arrests for assault. All
5 I'm doing is granting a motion in limine.

6 I do want to state and caution everyone, that door can
7 be opened a lot of different ways. And so if it's opened, then
8 we'll address it at the time. But the Court will grant 404(b)
9 -- the motion in limine regarding the 404(b) evidence.

10 All right. Now, as a part of that same motion in
11 limine, you do raise the issue of, I guess it's Border Patrol
12 Agent Fuentes and a good act that you believe the Government is
13 going to put in. And so the Court has reviewed that.

14 And I don't disagree with your position. I guess,
15 Ms. Kanof, I'd like to hear from you: Is it your intention to
16 put in some incident regarding a shooting with Mr. Fuentes?

17 MS. KANOF: No, Your Honor. We discussed this in
18 court before.

19 THE COURT: I thought so, but --

20 MS. KANOF: We -- we gave them the discovery on other
21 incidents that occurred where things were properly reported and
22 properly done that the defendants had knowledge of. And we
23 intended it only for rebuttal purposes, should they raise the
24 issue, and in the direct through the -- through their direct,
25 or if it comes out through the cross-examination of our

1 witnesses.

2 Mr. Ramos, Your Honor, is on the evidence response
3 team, knows what the requirements are for preserving a scene.

4 Mr. Compean was part of the Fuentes shooting. That's
5 with regard to Compean, by the way.

6 Mr. Compean helped in the seizure, every -- those --
7 all we did was, we provided examples of which the defendants
8 were either part of or were cognisant, knowledgeable of where
9 everything was done right and nothing happened to the agents,
10 in case their -- you know, their reason is -- Mr. Compean, when
11 questioned by Chief Deputy Luis Barker about why he didn't
12 report, says, Because you always side with the aliens.

13 So those were, basically, going to be examples to
14 counter any -- in rebuttal, not -- absolutely not offered in
15 the case-in-chief -- any issues that might be raised that makes
16 them pertinent.

17 THE COURT: So you don't have any problems with the
18 granting of the motion in limine?

19 MS. KANOF: I -- you know what, Your Honor? I don't
20 remember her putting that in her motion in limine. But,
21 yeah --

22 THE COURT: You don't intend to use that unless
23 it's --

24 MS. KANOF: In the Government's case-in-chief?

25 THE COURT: Yes.

1 MS. KANOF: No.

2 THE COURT: All right. The Court will grant the
3 motion in limine regarding any testimony on the shooting by
4 Border Patrol Agent Manny Fuentes.

5 The third part of that motion has to do with
6 Mr. Compean's statements as being admissible against Mr. Ramos.
7 Is that correct?

8 MS. STILLINGER: That's correct, Your Honor. And I
9 imagine the Government would probably agree to that. Although
10 this is assuming that Agent Compean -- Mr. Compean does not
11 testify. Obviously, the statements are still admissible
12 against him, but they're not admissible insofar as they mention
13 Mr. Ramos.

14 THE COURT: All right. What's the Government's
15 position?

16 MS. KANOF: She's asking for the Judge to give a
17 Bruton charge?

18 MS. STILLINGER: Yes.

19 MS. KANOF: Except I don't -- I don't know that
20 Mr. Compean -- Bruton is really when the statement that the
21 defendant is making implicates the other person. And
22 Mr. Compean never talks about Mr. Ramos.

23 MR. GONZALEZ: Excuse me. He does mention him at
24 least one time in his statement.

25 MS. KANOF: Oh, I'm sorry. Do you want to address it?

1 MR. GONZALEZ: I think at the very end of his
2 statement he -- he refers to Mr. Ramos. And I don't know if
3 you have that, Ms. Stillinger.

4 MS. STILLINGER: I don't have it handy, but I'm pretty
5 sure I know what he said. I think in the last part he says, I
6 think Mr. Ramos was trying to kill Aldrete-Davila.

7 MS. KANOF: Okay. That would -- that would be subject
8 to the Bruton limitation, Your Honor, I agree.

9 MR. GONZALEZ: We were just going to go ahead and make
10 sure that the witnesses don't --

11 MS. KANOF: -- didn't say it.

12 THE COURT: All right. That will be granted.

13 All right. Now, don't move.

14 MS. STILLINGER: Okay. And I guess there's one other
15 thing on that, Your Honor. I'm not -- I'm not just asking for
16 a Bruton instruction, I'm asking that his statement be --

17 THE COURT: I've granted the motion in limine
18 regarding that.

19 MS. STILLINGER: Okay.

20 THE COURT: And the Bruton instruction is a
21 different -- but I think they're agreeing to a Bruton
22 instruction.

23 MS. STILLINGER: All right.

24 THE COURT: Okay. Now, stay right where you are,
25 Ms. Stillinger, since I have you there.

1 MS. STILLINGER: Yes, ma'am.

2 THE COURT: Because I also show you have a motion
3 regarding production of Jencks material. Where are we at on
4 that?

5 MS. STILLINGER: As I mentioned in chambers,
6 Your Honor, the Government has relented and said that they
7 would give us Jencks material at 3:00 on Monday afternoon,
8 despite the fact that it's a federal holiday. So we have made
9 plans to meet them at 3:00 Monday afternoon. And we believe
10 that is reasonable. We would like more time, but that's
11 reasonable, in order to avoid any unnecessary delays in the
12 trial. So --

13 THE COURT: So that's resolved?

14 MS. STILLINGER: -- I will withdraw my motion. It can
15 be denied as moot.

16 THE COURT: All right. Is that correct?

17 MS. KANOF: Yes, Your Honor.

18 THE COURT: All right. So the Court will deny that as
19 moot.

20 Okay. And then the third thing I want to take up with
21 you, Ms. Stillinger, is the second motion in limine regarding
22 the -- I guess there's two parts of it. That was the one filed
23 today.

24 The first portion has to do with referring to the
25 witness as a victim, as opposed to, I guess, complaining

1 witness.

2 The Court, I will tell you at this point -- and I'm
3 lis- -- I'm happy to briefly hear from you. But the Court's of
4 the mind to deny it, so -- unless you have something further
5 you want to add that the Court has not heard. But the Court
6 has no problems with referring to him as victim, complaining
7 witness, Mr. Aldrete. I don't think there's any case law out
8 there, unless you can show it to me, that indicates there's
9 some prejudice to the defendant if he's referred to as victim.

10 MS. STILLINGER: And, Your Honor, actually, this just
11 occurred to me when I got the Government's jury instructions
12 and voir dire questions, which was late yesterday. And I
13 didn't actually have an opportunity to do any research on that
14 issue, although I'll look into that. And if I can find a case
15 on point I will provide that to the Court.

16 I would ask the Court, even if the Government is not
17 restrained from doing that, I would ask the Court -- the
18 Government is asking the Court to use those words, and I would
19 ask the Court itself not to use those words.

20 THE COURT: So noted. All right.

21 And then the second part of that motion has to do with
22 violation of policy as being illegal. Is that correct?

23 MS. STILLINGER: That's correct, Your Honor. This
24 again is something that -- I filed this so late, because it
25 just came up when we were in court Monday, and Ms. Kanof

1 referred to the high-speed pursuit as being illegal. It
2 occurred to me that that's very misleading, if she were to say
3 something like that in front of a jury. It's a violation of
4 policy to engage in a high-speed chase, but that is not
5 illegal.

6 THE COURT: All right. Any --

7 MS. STILLINGER: And coming from a prosecutor --

8 THE COURT: Any problem with not referring to it as
9 illegal, as opposed to a violation of policy?

10 MS. KANOF: No problem.

11 THE COURT: All right. That's granted.

12 Ms. Stillinger, I just want to make sure. Those are
13 all I show for you for purposes of pending motions.

14 MS. STILLINGER: Yes.

15 THE COURT: All right.

16 MS. STILLINGER: And -- and -- I guess what Mr. Peters
17 is asking me to clarify is with respect -- the motion in limine
18 is covering, basically, any policy violations, which I
19 understand --

20 MS. KANOF: I understand.

21 MS. STILLINGER: Okay. Thank you.

22 THE COURT: Ms. Ramirez?

23 MS. RAMIREZ: Thank you, Judge.

24 THE COURT: Now I show, Ms. Ramirez, you have a number
25 of pending motions. Let's take them up in the order that I

1 have them, otherwise -- I have so much paper on -- I want to
2 make sure I cover everything.

3 I show you have a motion for disclosure, inspection,
4 and discovery. And I want to take that up first.

5 The Government -- I believe this was filed yesterday.
6 Did the Government receive a copy of it?

7 MR. GONZALEZ: I'm sorry. Which motion is that?

8 THE COURT: It's a motion for disclosure, inspection,
9 and discovery. And it primarily deals with confessions and
10 admissions or inculpatory remarks made by her client,
11 Mr. Compean.

12 MS. RAMIREZ: And I believe this -- I just have two
13 very specific issues with discovery that I believe that the
14 Government has not complied.

15 THE COURT: Okay. Just make sure they have it.

16 MS. RAMIREZ: Yes, ma'am. I hand-delivered a copy.

17 THE COURT: Do you have an extra copy that they can
18 see, so that they know what you're talking about?

19 MS. RAMIREZ: I don't.

20 MS. KANOF: If I can just look at it?

21 MS. RAMIREZ: Sure.

22 MS. KANOF: We don't have it, Judge.

23 THE COURT: All right. Let -- let me hear, Ms.- --
24 Ms. Ramirez, what it is your two concerns are.

25 And then, Ms. Kanof, you can respond, if you can.

1 MS. RAMIREZ: The only thing -- the only couple of
2 things that I'm requesting, Judge, is, Mr. Aldrete-Davila went
3 to some kind of clinic in Juarez right after the incident. And
4 he turned in a note to the Government that looks like this, and
5 that I received a copy of.

6 And I've been asking the Government to ask him the
7 name of the clinic, so that if he made any statements to the
8 clinic, or if he -- I know he got some medical treatment
9 there -- that I could get the name of the clinic, so that I can
10 go and retrieve the medical records.

11 THE COURT: Would this be under paragraph 14, which
12 deals with drug addiction and those kinds of things, or what
13 is -- what are we talking about here?

14 MS. RAMIREZ: Yes.

15 THE COURT: Okay.

16 MS. RAMIREZ: Or your standing discovery order, which
17 is paragraph 15, which is your standing discovery order.

18 MS. KANOF: Judge, actually, we don't have to give
19 statements made by him to anybody except law enforcement. The
20 Rule 416 and the Court's standing discovery order is, if he
21 makes statements to anybody else, the Government doesn't have
22 the duty or responsibility.

23 But Mr. Gardes -- Gonzalez did ask the agent to ask
24 him the name of the medical clinic, and he does not know it.

25 THE COURT: Okay.

1 MS. RAMIREZ: So he doesn't remember the name of the
2 medical clinic?

3 THE COURT: I guess that's their position.

4 MS. RAMIREZ: Okay, Your Honor.

5 THE COURT: All right.

6 MS. RAMIREZ: And, Your Honor, I received the immunity
7 agreement from Mr. Osvaldo Aldrete-Davila, and there's an
8 unconditional parole document, I guess, in the Government's
9 file. I just want the Government to stipulate that Mr. Davila
10 has not received any other advantages, promise from the
11 Government, in exchange for his testimony for this trial.

12 MS. KANOF: Your Honor, so far, not even a glass of
13 water. But when we do pretrial, and if he wants a Coke, we'll
14 probably get it for him.

15 THE COURT: All right. And so your response is no, I
16 assume?

17 MR. GONZALEZ: That's correct, Your Honor.

18 THE COURT: All right.

19 MS. RAMIREZ: I just wanted to make sure.

20 THE COURT: All right. So, on that motion for
21 disclosure, then, that resolved your concerns?

22 MS. RAMIREZ: Yes.

23 THE COURT: All right. Then the Court will deny it as
24 moot, unless there's something else there.

25 MS. RAMIREZ: That's it.

1 THE COURT: All right. Now, there's still some
2 other -- you have a motion to disclose written statements of
3 witnesses.

4 MS. RAMIREZ: That was the Jencks motion, Judge, and
5 that's --

6 THE COURT: Okay. So that's resolved?

7 MS. RAMIREZ: Yes, ma'am.

8 THE COURT: We're whipping through these.

9 Okay. And then you have the -- you've got the same
10 arrangement, I assume, to get these documents, or the
11 statements, on Monday afternoon?

12 MS. RAMIREZ: Yes, ma'am; 3:00 on Monday.

13 THE COURT: All right. You have an amended motion in
14 limine?

15 MS. RAMIREZ: Yes.

16 THE COURT: And the first portion of that has to do
17 with your client's --

18 MS. RAMIREZ: And the reason I filed it, Your Honor,
19 is because I received a letter from Mr. Gonzalez on January
20 30th. And he told me that he had filed a 404(b) notice on my
21 client, and I don't have it.

22 I looked in the Court's file. It's not there. So I
23 couldn't think of anything that was appropriate or -- for my
24 client, as it pertained to Rule 404(b), prior bad act. And so
25 I wanted to file 404(b), so the Government would tell me what

1 it was that they were going to try and introduce against my
2 client, and for them to approach the bench prior to the time to
3 introduce it, since they haven't given me any notice of it.

4 THE COURT: Okay. Any problems with that?

5 MR. GONZALEZ: No, Your Honor, but I would like to see
6 what she's referring to.

7 THE COURT: Okay. Are you --

8 MS. KANOF: We don't remember saying that.

9 THE COURT: Go ahead.

10 MS. RAMIREZ: 404(b).

11 MR. GONZALEZ: We were referring to the notice to --

12 MS. RAMIREZ: Oh, okay.

13 MR. GONZALEZ: There is nothing that we're aware of
14 that pertains to her client, Your Honor.

15 THE COURT: All right. Then I will grant that, should
16 anything come up at trial.

17 MS. RAMIREZ: Okay.

18 THE COURT: Then I expect everybody to approach the
19 bench regarding any prior bad acts involving Mr. Compean.

20 Character evidence?

21 MS. RAMIREZ: Same thing, Your Honor.

22 THE COURT: Yes.

23 MS. RAMIREZ: I would just ask for them to approach
24 the bench.

25 THE COURT: Any problems with that?

1 MR. GONZALEZ: No, Your Honor.

2 THE COURT: That will be granted.

3 And the third part of that is any purported oral or
4 written confession or statement of Mr. Compean. And you're
5 objecting to voluntariness and admissibility.

6 Now, my understanding on this is you are -- you're
7 not -- you haven't filed a motion to suppress.

8 MS. RAMIREZ: Correct.

9 THE COURT: You're just merely asking that, before
10 that's brought into evidence, that the parties approach the
11 bench on that.

12 MS. RAMIREZ: And I have -- he gave a written
13 statement. And I believe -- I have gotten a copy of the
14 written statement, Your Honor. Agent Sanchez has testified to,
15 I believe, the content of the oral statement. I have not
16 received anything else from the Government in reference to the
17 contents of the oral statement. So I'm assuming that those are
18 all the statements that are going to be admissible, or that the
19 Government is going to try to admit against my client at trial.
20 And so that's why I'm asking for the Government to approach the
21 bench prior to them trying to admit those statements against my
22 client.

23 MS. KANOF: I don't know what authority there is to
24 that admission against interest being admissible. She's hasn't
25 made a motion to suppress. And what would be the purpose for

1 approaching the bench be?

2 THE COURT: I don't disagree with Ms. Kanof. What is
3 the purpose behind approaching the bench?

4 MS. RAMIREZ: Your Honor, the only -- the only thing
5 I'm asking here is for them to approach the bench if they are
6 going to try and admit a statement that my client has given,
7 and I say that that statement was not given by him voluntarily.
8 Obviously, if I haven't filed a motion to suppress, I'm not
9 saying that it wasn't given voluntarily.

10 THE COURT: Well, there's only one statement. Is that
11 correct?

12 MS. RAMIREZ: Correct.

13 MS. KANOF: No. Well, Your Honor -- it depends on
14 your definition of statement. He --

15 THE COURT: Okay.

16 MS. KANOF: He -- he talks to his boss at the scene.
17 He talks to his boss back at the station. He then talks to --

18 THE COURT: It is oral statements and written
19 statements?

20 MS. RAMIREZ: They haven't given me notice. They have
21 only given me those statements.

22 MS. KANOF: Yeah, we have.

23 MS. RAMIREZ: Well, I haven't gotten them, Judge.

24 MS. KANOF: I mean, to the extent that her client said
25 anything within the realm -- that's why I'm saying it depends

1 on what she means by statement. I don't know what she means by
2 statement. Official statements within the purview of this
3 inves- -- criminal investigation have been provided to her.

4 But I don't know if she thinks that, when he tells his
5 boss he wasn't assaulted, or when he tells his boss that
6 Osvaldo didn't have a gun, if she thinks that's a statement. I
7 mean, he says lots of stuff.

8 So I don't know when or under what circumstances and
9 what she means by statement. The official statements that he
10 made to Chris Sanchez, the case agent, have been provided to
11 her as such. She has not made a motion to suppress those
12 statements. That was part of a law enforcement inquiry.

13 THE COURT: All right. Okay. Ms. Ramirez, this is --
14 go ahead. Is there anything you wanted to state before the
15 Court rules on this issue?

16 MS. RAMIREZ: No, Your Honor. That's all I wanted to
17 state.

18 THE COURT: All right. The Court will deny the motion
19 in limine regarding the -- any statements. Now, that doesn't
20 mean they may not be subject to objection, or -- I -- I don't
21 know, because I know there's a written statement. I don't know
22 if there are any other statements and whether they're relevant
23 or whether -- whatever. But that -- I'm just denying the
24 motion regarding the -- the motion in limine regarding the
25 approaching the bench regarding any prior statements. There's

1 been no motion to suppress.

2 All right. Now, I show you have no other pending
3 motions. Is that correct?

4 MS. RAMIREZ: That's correct, Judge.

5 THE COURT: All right.

6 MS. RAMIREZ: And I just want to make it clear, Judge,
7 that your standing discovery order goes -- orders the
8 Government to give me notice of the oral -- the substance of
9 the oral statement that was made by my client before and after
10 his arrest, and the written statement. And I've got the
11 written statement, but I haven't gotten the substance of the
12 oral statements.

13 THE COURT: So noted for the record. And again, the
14 Court's position is, if you have an objection at the time of
15 trial, because something comes out that you say violates that
16 order, then I will address it at that time. But I'm not
17 granting the motion in limine.

18 MS. RAMIREZ: Thank you, Judge.

19 THE COURT: Okay. Now --

20 MS. KANOF: We have -- we have an issue, Your Honor.
21 I'm sorry --

22 THE COURT: Go ahead. No, no, no. What --

23 MS. KANOF: Mr. Gonzalez and I -- it's not regarding
24 any of this that we've been discussing.

25 Mr. Gonzalez and I are in a quandary. In -- defense

1 counsel, and I don't remember whether it was -- I think both of
2 them -- at some point in time, either in their voir dire
3 questions that have been submitted to the Court, in discovery
4 requests, have alluded to somebody being addicted to drugs.
5 And we don't know who they're talking about.

6 They want the Judge to voir dire on it, or for them to
7 voir dire on a witness being addicted to drugs. They have -- I
8 don't recall whether it's in the jury instructions or not.
9 There might be a reference in the jury instructions.

10 We're not aware of any Government witness that has a
11 drug problem. In fact, we were so curious about it that we
12 inquired, and -- and we haven't done it -- I mean, we haven't
13 gotten any positive information.

14 MR. PETERS: I think I can clear this up for
15 Ms. Kanof.

16 THE COURT: Okay.

17 MR. PETERS: This is a page from the medical records
18 from Beaumont of Mr. Aldrete-Davila. Prior to, I guess, before
19 administering anesthesia, they ask you some questions. And
20 they asked him what his habits were. There's a box called
21 tobacco. There's a box called EPOH. We have no --

22 MS. KANOF: That's alcohol.

23 MR. PETERS: Okay. And then there's drugs. And
24 tobacco and drugs are checked. So --

25 MS. KANOF: No, there's an X on tobacco. And I don't

1 know what that mark on drugs is. But it says, Habit. It
2 doesn't say addiction.

3 And if that's what they're concerned about, let me
4 cite the Court to a Fifth Circuit case, United States V.
5 Samples. It is in my 608 motion, the case. It's a Fifth
6 Circuit case, that general questions relating to a witness'
7 drug use on dates other than those on which the witness appears
8 for their testimony are prohibited. And there's case -- there
9 is case law that follows it.

10 If he is not on the drug -- no, let me go back. If --
11 even if he is on the drug -- and I don't know that he has, you
12 know, any -- I don't know that this is an addiction -- and
13 they're talking about addiction. I don't know if he meant, you
14 know, I take antihistamines. I don't know what that meant.
15 We'll find out when we pretrial him.

16 But the law is that it's not admissible for any
17 purpose, that it does not go to the admissibility of the
18 testimony, it goes to the weight. And that the only inquiry
19 that can be made is if he was on drugs at the time of what he
20 observed, that -- so much so that his -- it alters his ability
21 to perceive, or if he's on drugs at the time of the testimony
22 so much so that it alters his ability to perceive.

23 And I don't -- I couldn't find any case law where you
24 could question anybody about it unless they were an admitted
25 addicted individual who was a co-defendant, or somebody that

1 was, like, cooperating with the Government that got -- you
2 know, was involved in the offense. I think there's meth cases
3 that talked about that.

4 THE COURT: All right. But it's your position -- and
5 you can address it in just a second, Mr. Peters. But I just
6 want to make sure for the record, Ms. Kanof, your -- it's your
7 position, Ms. Kanof, that there's no information in the
8 Government's possession that indicates that -- I assume we're
9 talking about the complaining witness is a drug addict.

10 MS. KANOF: Absolutely not.

11 THE COURT: Or had treatment for drug addiction.

12 MS. KANOF: Absolutely not.

13 THE COURT: All right. Go ahead, Mr. Peters.

14 MR. PETERS: Your Honor, this is what we know. We
15 know that rule -- or that the Fifth Circuit pattern jury
16 instruction 1.16 says, Testimony of someone who has shown the
17 abuse of addictive drugs during the period of time about which
18 the witness testifies must be always be examined and weighed by
19 the jury with greater care and caution. And there's some other
20 cautionary instructions that go with that.

21 Here is what else we know. We know that --

22 THE COURT: That's pattern jury instruction what? I'm
23 sorry, I just want to make sure I have it.

24 MR. PETERS: 1.16.

25 THE COURT: 1.16? Okay.

1 MR. PETERS: We also know that approximately a month
2 after this incident, when Mr. Aldrete-Davila was answering
3 questions to somebody who was about to administer anesthesia to
4 him -- okay, a pretty good incentive to be truthful, because
5 you don't want to die. He answers -- he appears, from this
6 record, and we can -- you know, we can discover it more from
7 the medical testimony. But he appears, from his record, to
8 have stated, Yeah, I have a habit of using drugs. At this
9 point we don't know what drug.

10 But if he had a habit of using drugs, it seems like,
11 at the minimum, that opens the door for us to ask him, What
12 were you -- were you using drugs on the day of this incident?

13 Furthermore, there's going to be -- I can tell the
14 Court there's going to be a conflict in the testimony regarding
15 what happened when Mr. Aldrete-Davila was hit with this bullet.

16 The Government says Mr. Aldrete-Davila says he fell
17 down, and then he got up and went. I think there's going to be
18 other evidence -- there's a good chance there's going to be
19 other evidence that -- to the effect that he never fell down,
20 which ra- -- which, in my mind, certainly raises the inference
21 maybe he was high on some kind of drug that kept him from
22 feeling the pain.

23 Now, if the doctor comes in and says, Oh, no, that
24 doesn't mean that, well, then, it's just a dead end, and we're
25 barking up the wrong tree.

1 THE COURT: But you don't disagree with Ms. Kanof that
2 the issue of the use of drugs, or drug addiction, would only be
3 as it pertains to his condition on the day in question --

4 MR. PETERS: Absolutely.

5 THE COURT: -- or on the witness stand.

6 MR. PETERS: Absolutely.

7 THE COURT: All right. All right.

8 MS. KANOF: Your Honor, if I may respond, the
9 anesthesia was then administered.

10 THE COURT: I understand. That's fine.

11 MR. PETERS: Well, you know, Judge, that's not the
12 issue. The issue is whether --

13 THE COURT: I understand what the issue is. I just
14 want to make sure we're all on the same page. Okay.

15 Now, let's talk about a couple of other things. The
16 Court received a supplemental Giglio disclosure. Did everybody
17 get that today?

18 MS. STILLINGER: Yes, Your Honor.

19 THE COURT: Any issue on that?

20 MS. STILLINGER: Just -- I'm not sure if we had it on
21 the record that -- it says sealed, but I understand that it is
22 not --

23 THE COURT: It is not sealed.

24 Okay. Now, I want to talk about, then, the trial,
25 finally. And that is that it's my understanding that we

1 anticipate this case taking four to five days. In other words,
2 all of next week, we may run into the following week, depending
3 on how it goes, because we only have a four-day week next week.
4 Everybody agree?

5 MR. GONZALEZ: Yes, Your Honor.

6 MS. STILLINGER: Yes, Your Honor.

7 MS. RAMIREZ: Yes.

8 THE COURT: Okay. We will do jury selection Friday
9 afternoon. As a part of the jury selection, I want to explain
10 the way I work. And that is that we will start the selection
11 at 5:30. Obviously, because of the nature of this, and I will
12 caution everybody, you know what --

13 MS. KANOF: Judge, did you mean 5:30?

14 THE COURT: I'm sorry. 1:30. No. It's a quarter to
15 six now. I told you it's getting late.

16 I want to caution everybody, because of the nature of
17 this case, and we have ad nauseum talked about some of these
18 issues. I will caution everyone, for purposes of jury
19 selection, you know the Court's rulings, you know the Court's
20 position. I expect everybody to comply with those Court
21 rulings.

22 And, as a part of that, I want you to know we have a
23 very small courtroom. For those of you who haven't been in
24 here for jury selection before, we put people in the jury box,
25 we put people in the back, so we fill up this whole room.

1 There is no room for anyone else, essentially.

2 When I do the jury selection, then, the Court does the
3 majority of it. I have asked you to submit proposed voir dire.
4 We're going to talk about that in just a minute. But I do want
5 you to know, and I want to state on the record, that once we
6 get into the jury questioning, if there is anyone who answers
7 affirmatively indicating any sort of bias or prejudice, at that
8 point the Court will advise them that we will take further
9 questioning up outside the presence of the jury, in order to
10 avoid poisoning the panel. And so jury selection will be
11 conducted in that manner, and we will pick the jury on Friday
12 afternoon.

13 Then opening statements will be on Tuesday morning.
14 And probably, at some point shortly thereafter, I will be
15 calling -- you will be calling witnesses. And that's for the
16 purposes of getting your witnesses here for the trial.

17 I -- do you have any idea, Ms. Kanof or Mr. Gonzalez,
18 just so that defense has some idea of when their witnesses need
19 to be here, how long you anticipate the case-in-chief to go? I
20 mean, how soon do you expect that -- if everything goes
21 smoothly, exactly the way you want it to go -- that they might
22 need to present their first witness?

23 MR. GONZALEZ: Thursday morning, Your Honor.

24 THE COURT: Okay. So I guess you won't --

25 MR. GONZALEZ: What time are we stating on Tuesday?

1 THE COURT: We're going to start at 8:30.

2 MR. GONZALEZ: Okay.

3 THE COURT: I'll need you to be here at 8:30.

4 Okay. And -- and so you've heard that, defense
5 counsel. It's not anticipated you're going to need witnesses
6 here. Now, you might have a couple of witnesses stand by in
7 case something happens Wednesday afternoon. And, as we get
8 into trial Tuesday, you'll have a better idea, but for purposes
9 of preparing for next week.

10 The other thing is, if -- my understanding is defense
11 does not need a translator, do you? I just need to know, for
12 the purposes of supplying an interpreter.

13 MS. STILLINGER: Our clients certainly do not, and I
14 can't think of any witnesses at this point in time that we have
15 that do.

16 THE COURT: Okay.

17 MS. RAMIREZ: I don't believe so, Your Honor.

18 THE COURT: All right. Government, then, that puts
19 you in a position, if you need an interpreter, you need to get
20 an interpreter. All right? All right. So I just want to make
21 sure we're clear on that.

22 Now, let's talk about voir dire. I have gone through
23 everyone's proposed voir dire. Having reviewed everybody's
24 proposed voir dire, I will tell you this: The Court,
25 regarding -- you've broken it down, both Government and

1 defense, have broken it down into those questions to be
2 propounded by the Court and those questions to be propounded by
3 counsel. I don't know if you want me to go over every one.
4 But let's take defendant Mr. Ramos's proposed voir dire
5 questions. I don't know who is going to respond for the
6 purposes of that.

7 MS. STILLINGER: I can talk about those.

8 THE COURT: Okay. The Court has -- I will say, in
9 general, unless I tell you otherwise, when I tell you that the
10 Court has no problems with it, I assure you I will be asking
11 those questions. But that doesn't mean I will ask them exactly
12 the way you ask them.

13 MS. STILLINGER: Of course.

14 THE COURT: But your first one is questions regarding
15 U.S. Border Patrol, their involvement, those kinds of things.
16 Yes, the Court will be voir diring the panel regarding that.

17 Questions regarding defendant's medical condition.
18 This is the first time I know of a, quote, medical condition.
19 I don't know if the Government's aware of defendant's medical
20 condition. Are you aware of a --

21 MS. KANOF: We are.

22 MR. GONZALEZ: Yes, we are, Your Honor.

23 THE COURT: Okay. And do you have any problems with
24 these questions? I -- I mean, I don't -- I have not noticed
25 that, but I just want to make sure -- I haven't decided exactly

1 how I'm going to propound the questions, but I didn't even know
2 he had it, so I just wanted to make sure that --

3 MS. KANOF: If the Court would include -- I don't
4 object to them asking about his Tourette's.

5 THE COURT: I'm going to be asking.

6 MS. KANOF: Right. -- to the Court asking. But just
7 not to refer to it as a disability, because he's a
8 sharpshooter. He's a firearms trainer. It hasn't impeded his
9 ability to be a Border Patrol agent. So, really, I guess the
10 only issue is asking whether -- informing them, and asking them
11 whether that would influence the way they heard his testimony.

12 THE COURT: Yeah. And somebody might suffer from
13 Tourette's syndrome and have other opinions about it. I just
14 want -- okay. I got it.

15 MS. STILLINGER: That's fine, Your Honor. We're
16 certainly not planning on relying on that as any part of the
17 defense in this case. I just -- I know jurors tend to study
18 the defendants. And I know, when I met Mr. Ramos, that's one
19 of the first things that struck me. It seemed like a nervous
20 twitch.

21 THE COURT: Okay. That's fine. Not a problem.

22 All right. And I just -- the reason I asked you about
23 that, it's not because I have a problem with it, but I just
24 wasn't even aware of it.

25 All right. Now, the next one is questions regarding

1 the difference between law and rules. The Court will be
2 advising the jury that they will be instructed regarding the
3 law. And I assume, when we're talking about rules, we're
4 talking about procedural, Gov- -- I mean, Border Patrol
5 procedure. Is that what we're talking about?

6 MS. STILLINGER: Yes.

7 THE COURT: The Court has granted a motion in limine
8 in that matter. I don't think that should be an issue, but the
9 Court will address the law, in instructing the law.

10 MR. GONZALEZ: Your Honor, can we get a clarification
11 on the motion in limine? Because I think we have a
12 disagreement as to what you ruled on that.

13 THE COURT: All right. What the Court ruled is that
14 there's no problem with you referring to Border Patrol
15 procedures as procedures, just not that they're illegal.

16 MR. GONZALEZ: Okay.

17 THE COURT: Unless you've got some indication they're
18 illegal, or if he's been charged with that -- with them being
19 illegal.

20 MS. KANOF: Thank you, Your Honor. I was right,
21 Your Honor.

22 THE COURT: Okay. Thank you for making you right? Is
23 that what --

24 MS. KANOF: It's that I'm so rarely right that I
25 appreciate it.

1 THE COURT: Okay. The next one is questions regarding
2 credibility issues of victim witnesses. I will be addressing
3 credibility, and so I don't have a problem with that.

4 Questions regarding immunity. The Court will address
5 the jury and voir dire them regarding immunity.

6 Questions regarding prior inconsistent statements.
7 The Court will address them and instruct them regarding prior
8 inconsistent statements.

9 Questions regarding presumption of innocence. The
10 Court will be questioning the panel regarding those, and
11 addressing the panel regarding presumption of innocence.

12 Questions regarding reasonable doubt. Yes, the Court
13 will be addressing that issue.

14 All right? Now that's all the ones that you've asked
15 the Court to address. Is that right?

16 MR. PETERS: I'm sorry, Your Honor. Did you say you
17 would grant the one on addictive drugs?

18 THE COURT: I guess I skipped over that one. Which
19 one -- what page is it on?

20 MS. STILLINGER: It's on --

21 THE COURT: Oh, it's at the very bottom.

22 MS. STILLINGER: Yes.

23 THE COURT: I had a question mark by that one, because
24 my -- and you've somewhat answered that today. The only thing
25 I might do -- and I wasn't aware of what that meant -- is any

1 sort of instruction regarding testimony, as sort of the way
2 we've talked about it today, which is that it may have to do
3 with his ability to perceive, et cetera, as it pertains to the
4 day of the incident or his ability to testify at trial, when
5 we're talking about a witness.

6 So, yes, the Court, if that is applicable, we will be
7 addressing that.

8 MS. KANOF: Your Honor, if it's applicable, how do we
9 make it applicable? I -- you know, I have a habit of drugs,
10 blood pressure drugs, antihistamines, asthma medication.

11 THE COURT: I think that you can be cross-examined if
12 that affects your ability to testify, Ms. Kanof.

13 MS. KANOF: This says addictive drugs, because I think
14 that is the law, an addictive drug.

15 THE COURT: Uh-huh.

16 MS. KANOF: And that's the question. What if he
17 doesn't use addictive drugs?

18 THE COURT: Then it's not an issue. But I think
19 that -- in case he is, I have to at least advise the jury that
20 there may be an issue regarding that.

21 MS. KANOF: So do you want us to report to the Court
22 before voir dire, to indicate whether -- what we've discovered?

23 THE COURT: If you have any indication beforehand that
24 he is or is not, then, yes, the Court would appreciate that.

25 MS. KANOF: And is the Court going to specifically

1 talk about him as a witness?

2 THE COURT: No, no.

3 MS. KANOF: Oh, okay.

4 THE COURT: No, no, obviously not. I'm going to say
5 that, should there be any evidence --

6 MS. KANOF: Oh, okay.

7 THE COURT: -- that a witness is addicted, that may
8 affect their ability to perceive. That's why I said the Court
9 will be addressing it, maybe not in the way you have addressed
10 it. Okay? Okay.

11 Now, questions -- proposed questions to be propounded
12 by counsel. I have read your proposed questions. I have read
13 the Government's proposed questions. I will tell you, having
14 read both sides' proposed questions, almost every question that
15 the Government has requested me to allow them to ask, I go over
16 with the jury.

17 And so -- and then regarding your questions I -- we
18 talk about Border Patrol, and we talk about force and those
19 kinds of things. I have decided, having read everybody's
20 propounded questions -- or questions that they wish to propound
21 to the panel, that I have decided there will be no voir dire by
22 defense or Government. Okay? So, just so you're aware, all of
23 your questions will be denied.

24 Okay. Government, come on up.

25 MR. GONZALEZ: Yes, Your Honor.

1 THE COURT: Your turn at the box.

2 MS. STILLINGER: And, just for the record, of course,
3 Your Honor, the questions we proposed to be answered by
4 counsel, then, we would move those up to the first section and
5 ask the Court to address those issues.

6 THE COURT: I will review those, and I will assure you
7 I'm not going to ask them -- any of them in the way you've
8 asked me to ask them. But I will review them and make sure
9 that if there's any -- anything that I feel is important that
10 the panel be questioned about I will do that.

11 MS. STILLINGER: Thank you.

12 THE COURT: Okay.

13 MR. GONZALEZ: Your Honor, I can't find my questions.
14 May I have a moment?

15 THE COURT: It's your trial preparation filing.

16 MR. GONZALEZ: Okay. Here we go. Thank you,
17 Your Honor.

18 THE COURT: You're welcome. Page 2 of your trial
19 preparation document, paragraph 4, knowledge of defendants and
20 their family members. I will go into all of the participants,
21 including counsel of record, et cetera. So, yes, the Court
22 will be addressing that in voir dire.

23 Retired employees. Yes, the Court, if they've
24 indicated retirement, will question them as to what they're
25 retired from.

1 Assault. Yes, the Court goes into any incidents of
2 assault.

3 On the issue of military service and education in
4 general, the Court, I guess -- again, only Ms. Stillinger has
5 been here for a prior trial. I normally do not go into all of
6 these kinds of personal questions. I understand, in a general
7 voir dire, why counsel likes to get to know their -- their
8 panel. But I will tell you that it's not this Court's
9 intention to go into a bunch of, who's a high school graduate,
10 who attended vocational school. I don't think that's pertinent
11 for purposes of picking this panel.

12 I will be going into some issues about criminal
13 justice, and if anybody has got a particular criminal justice
14 background, but not their sort of general military service and
15 educational background.

16 Same thing to do with family. If they've got
17 children, unless their children work for Border Patrol, I don't
18 really think it's going to be relevant, and I don't think I
19 will be going into that.

20 Prior jury service. The Court does address that.

21 Grand Jury service. The Court does address that.

22 Testimony. The Court does address that.

23 Law enforcement work. The Court does address that.

24 Circumstantial evidence. The Court will be addressing
25 that.

1 Law enforcement acquaintances. The Court will address
2 that.

3 Family members in law enforcement. The Court will
4 address that.

5 Leisure activities. Reading bumper stickers, the
6 Court doesn't address.

7 Party to a lawsuit. Only as it pertains to something
8 relevant, for example, if they've ever filed a suit against the
9 Government, those kinds of things. But if they're been in a
10 divorce, I don't normally go in there.

11 I do ask them if they've had -- just so you're
12 aware -- any sort of experience with the court system that
13 makes them so prejudiced that they can't sit. But, other than
14 that, I don't really want to know their divorce stories.

15 Sitting in judgment. I do -- the Court does go into
16 that.

17 Fair and impartial. The Court goes into that.

18 And nature of the charged offense. The Court goes
19 into that.

20 All right.

21 MR. GONZALEZ: Thank you.

22 THE COURT: The questions -- much like I've indicated
23 with defense counsel -- the questions you wish to propound, the
24 Court will be going into some of them, perhaps not all of them.
25 But I do address -- I mean, we live on the border. I do talk

1 to them about, you know, if anybody has had an experience with
2 law enforcement, Border Patrol, illegal aliens, any of those
3 kinds of things.

4 Credibility issues. I will be talking to them about
5 immunity, I've already said, a victim of crime, et cetera. All
6 right?

7 MR. GONZALEZ: Yes, Your Honor. Thank you.

8 THE COURT: All right. Anything else we need to take
9 up this afternoon?

10 MS. RAMIREZ: Judge, I just wanted to state that --
11 you stated that I wouldn't be able to -- I wouldn't be able to
12 ask -- page 5 of the propounded questions by counsel, correct?

13 THE COURT: Where -- are you talking about where --
14 page 5 of where?

15 MS. RAMIREZ: My proposed jury questions.

16 THE COURT: I don't know that I've seen your proposed
17 jury questions.

18 MS. RAMIREZ: And I did file them, Your Honor.

19 THE COURT: Okay. Do you have a copy with you?

20 MS. RAMIREZ: I do.

21 THE COURT: Let me just make sure. And you know what?
22 If you would give Mr. Martinez those, because I don't -- if
23 I've got them, I haven't seen them. They might be in my office
24 or something.

25 Yeah, I have not seen these. Let me just look through

1 yours quickly.

2 MS. RAMIREZ: And I did file proposed jury
3 instructions, as well, Judge.

4 THE COURT: Okay. I will tell you that -- to be fair
5 to all parties, I will not allow you to propound questions. So
6 yes, page 5, if relevant, will be propounded by the Court.

7 Regarding your specific ones, I apologize to you,
8 Ms. Ramirez, but I didn't see this.

9 Are there any ones you're -- I -- I've gone -- I mean,
10 some of these are repetitive. Are there any of them you're
11 particularly concerned about that you want me to address
12 whether or not I will be addressing it? Because I -- I do
13 address reasonable doubt. I do address, you know, the Border
14 Patrol agents. I do talk about relationship with law
15 enforcement. Is there any one that you think of -- that you
16 can think of that you're particularly concerned about?

17 MS. RAMIREZ: The drug trafficking one would be nice,
18 page 21. I'm kidding.

19 THE COURT: Oh, okay. All right. Any others?

20 MS. RAMIREZ: Page 5, Judge. You said that we
21 wouldn't be able to ask any questions. Counsel is not allowed
22 to ask any questions. But I would just -- for the record, I'd
23 say that I need to ask these questions to the panel to
24 intelligently exercise my peremptory challenges.

25 THE COURT: So noted.

1 MS. RAMIREZ: Thank you, Judge.

2 THE COURT: All right. And again, as I have
3 indicated, there will be some voir dire outside the presence of
4 the jury. And -- but again, I will caution you that you will
5 hear the Court propounding the questions, and only as they
6 relate to any bias or prejudice displayed will I allow you to
7 further question them.

8 All right. Anything further, then?

9 MS. STILLINGER: No, Your Honor.

10 MS. RAMIREZ: No, ma'am.

11 THE COURT: All right. We'll see everybody here
12 Friday at 1:30.

13 MS. STILLINGER: Thank you, Judge.

14 THE COURT: All right. Ms. Ramirez, is this my copy,
15 or do you need Mr. Martinez to make a copy?

16 MS. RAMIREZ: No, Judge, it's yours.

17 THE COURT: Thank you.

18 (Transcript continues in Volume V.)

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18 I certify that the foregoing is a correct transcript

19 from the record of proceedings in the above-entitled matter. I

20 further certify that the transcript fees and format comply with

21 those prescribed by the Court and the Judicial Conference of

22 the United States.

23

24 Signature: _____ Date: _____

25 David A. Perez, CSR, RPR

David A. Perez, CSR, RPR